



January 18, 2008

SENATE BILL No. 248

DIGEST OF SB 248 (Updated January 16, 2008 6:44 pm - DI 71)

Citations Affected: IC 6-3.1; IC 20-50; noncode.

Synopsis: Scholarship granting organization tax credit. Provides a state tax credit to a taxpayer that makes a contribution to a scholarship granting organization for use by the scholarship granting organization in a scholarship program to provide scholarships to eligible students. Defines "eligible student" as an individual who: (1) has legal settlement in Indiana; (2) is between five and 22 years of age; (3) either has been or is currently enrolled in a participating school; (4) is enrolling in kindergarten or was previously enrolled in a public school; and (5) either: (A) has an annual household income of not more than 300% of the federal income poverty level; or (B) received a scholarship as an eligible student in the immediately preceding school year. Sets forth a process for the department of state revenue to certify a scholarship program administered by a scholarship granting organization.

Effective: Upon passage.

Drozda

January 10, 2008, read first time and referred to Committee on Education and Career Development.
January 17, 2008, amended, reported favorably — Do Pass.

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SB 248—LS 6734/DI 114+



January 18, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 248

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-30.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 30.5. School Scholarship Tax Credit**

5 **Sec. 1. As used in this chapter, "credit" refers to a credit**
6 **granted under this chapter.**

7 **Sec. 2. As used in this chapter, "pass through entity" means:**

- 8 (1) a corporation that is exempt from the adjusted gross
9 income tax under IC 6-3-2-2.8(2);
10 (2) a partnership;
11 (3) a limited liability company; or
12 (4) a limited liability partnership.

13 **Sec. 3. As used in this chapter, "scholarship granting**
14 **organization" refers to an organization that:**

- 15 (1) is exempt from federal income taxation under Section
16 501(c)(3) of the Internal Revenue Code; and
17 (2) conducts a school scholarship program.

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1 **Sec. 4.** As used in this chapter, "school scholarship program"
 2 refers to a scholarship program certified by the department under
 3 **IC 20-50.**

4 **Sec. 5.** As used in this chapter, "state tax liability" means a
 5 taxpayer's total tax liability that is incurred under:

6 (1) **IC 6-3-1 through IC 6-3-7** (the adjusted gross income tax);

7 (2) **IC 6-5.5** (the financial institutions tax); and

8 (3) **IC 27-1-18-2** (the insurance premiums tax);

9 as computed after the application of the credits that under
 10 **IC 6-3.1-1-2** are to be applied before the credit provided by this
 11 chapter.

12 **Sec. 6.** As used in this chapter, "taxpayer" means an individual
 13 or entity that has any state tax liability.

14 **Sec. 7.** After December 31, 2008, if there is a specific
 15 appropriation from the general assembly to implement the credit,
 16 a taxpayer that makes a contribution to a scholarship granting
 17 organization for use by the scholarship granting organization in a
 18 school scholarship program is entitled to a credit against the
 19 taxpayer's state tax liability in the taxable year in which the
 20 taxpayer makes the contribution.

21 **Sec. 8.** The amount of a taxpayer's credit is equal to seventy-five
 22 percent (75%) of the amount of the contribution made to the
 23 scholarship granting organization for a school scholarship
 24 program.

25 **Sec. 9.** A taxpayer is not entitled to a carryover, carryback, or
 26 refund of an unused credit.

27 **Sec. 10.** If a pass through entity is entitled to a credit under
 28 section 7 of this chapter but does not have state tax liability against
 29 which the tax credit may be applied, a shareholder, partner, or
 30 member of the pass through entity is entitled to a tax credit equal
 31 to:

32 (1) the tax credit determined for the pass through entity for
 33 the taxable year; multiplied by

34 (2) the percentage of the pass through entity's distributive
 35 income to which the shareholder, partner, or member is
 36 entitled.

37 **Sec. 11.** To apply a credit against the taxpayer's state tax
 38 liability, a taxpayer must claim the credit on the taxpayer's annual
 39 state tax return or returns in the manner prescribed by the
 40 department. The taxpayer shall submit to the department the
 41 information that the department determines is necessary for the
 42 department to determine whether the taxpayer is eligible for the

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credit.

Sec. 12. A contribution shall be treated as having been made for use in a school scholarship program if:

(1) the contribution is made directly to a scholarship granting organization; and

(2) either:

(A) not later than the date of the contribution the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship program; or

(B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

Sec. 13. The department, on an Internet web site used by the department to provide information to the public, shall provide the following information:

(1) The application for the credit provided in this chapter.

(2) A timeline for receiving the credit provided in this chapter.

(3) The total amount of credits awarded under this chapter during the current calendar year.

Sec. 14. The department shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 20-50 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 50. SCHOOL SCHOLARSHIPS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agreement" refers to an agreement between the department of state revenue and an applicant that applies for certification of a school scholarship program.

Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for use in a school scholarship program.

Sec. 4. "Cost of education" means the total cost for operating a school, including donated funds and facility costs, divided by the school's enrollment.

Sec. 5. (a) "Eligible student" refers to an individual who:

(1) has legal settlement in Indiana;

(2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in

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IC 20-33-2-7;

(3) either has been or is currently enrolled in a participating school;

(4) is enrolling in kindergarten or was previously enrolled in a public school; and

(5) either:

(A) has an annual household income of not more than three hundred percent (300%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article.

(b) The term, for the calendar year beginning January 1, 2009, does not include any student enrolling in kindergarten.

Sec. 6. (a) "Participating school" refers to a public or nonpublic school that:

(1) an eligible student is required to pay tuition to attend;

(2) voluntarily agrees to enroll an eligible student; and

(3) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board.

(b) The term does not include a public school in a school corporation where the eligible student has legal settlement under IC 20-26-11.

Sec. 7. "Scholarship granting organization" refers to an organization that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) is organized at least in part to grant school scholarships.

Sec. 8. "School scholarship" refers to a grant to pay only the cost of education for an eligible student as determined for the school year (as defined in IC 20-18-2-17) for which the scholarship will be granted.

Chapter 2. Exchange of Information; Rules

Sec. 1. The department of state revenue shall maintain a publicly available list of the school scholarship programs certified by the department of state revenue. The list must contain names, addresses, and any other information that the department of state revenue determines is necessary for the public to determine which

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1 scholarship granting organizations conduct school scholarship
2 programs. A current list must be posted on an Internet web site
3 used by the department of state revenue to provide information to
4 the public.

5 **Chapter 3. Scholarship Granting Organizations; Certification;
6 Administration of Contributions**

7 **Sec. 1. A program qualifies for certification as a school
8 scholarship program if:**

9 **(1) the program:**

10 **(A) is administered by a scholarship granting organization;
11 and**

12 **(B) has the primary purpose of providing school
13 scholarships to eligible students; and**

14 **(2) the scholarship granting organization administering the
15 program:**

16 **(A) applies to the department of state revenue on the form
17 and in the manner prescribed by the department of state
18 revenue; and**

19 **(B) enters into an agreement with the department of state
20 revenue to comply with this article.**

21 **Sec. 2. The department of state revenue shall certify all
22 programs that meet the qualifications under section 1 of this
23 chapter as school scholarship programs.**

24 **Sec. 3. An agreement entered into under section 1 of this chapter
25 between the department of state revenue and a scholarship
26 granting organization must require the scholarship granting
27 organization to do the following:**

28 **(1) Provide a receipt to taxpayers for contributions made to
29 the scholarship granting organization that will be used in a
30 school scholarship program. The department of state revenue
31 shall prescribe a standardized form for the receipt issued
32 under this subdivision. The receipt must indicate the value of
33 the contribution and portion of the contribution being
34 designated for use in a school scholarship program.**

35 **(2) Distribute at least ninety percent (90%) of the total
36 amount of contributions as school scholarships to eligible
37 students.**

38 **(3) Distribute one hundred percent (100%) of any income
39 earned on contributions as school scholarships to eligible
40 students.**

41 **(4) Conduct criminal background checks on all the
42 scholarship granting organization's employees and board**

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members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds.

(5) Make the reports required by this chapter.

Sec. 4. An agreement entered into under section 1 of this chapter may not prohibit a scholarship granting organization from receiving contributions other than contributions described in section 3(1) of this chapter.

Sec. 5. An agreement entered into under section 1 of this chapter must prohibit a scholarship granting organization from distributing school scholarships for use by an eligible student to:

(1) enroll in a school that has:

(A) paid staff or board members; or

(B) relatives of paid staff or board members;

in common with the scholarship granting support organization;

(2) enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or

(3) pay for the cost of education for a public school where the eligible student is entitled to enroll without the payment of tuition.

Sec. 6. (a) A scholarship granting organization must publicly report to the department of state revenue by August 1 of each year the following information regarding the organization's scholarships awarded in the previous school year:

(1) The name and address of the scholarship granting organization.

(2) The total number and total dollar amount of contributions received during the previous school year.

(3) The:

(A) total number and total dollar amount of scholarships awarded during the previous school year; and

(B) total number and total dollar amount of school scholarships awarded during the previous school year.

(b) The report must be certified under penalties of perjury by the chief executive officer of the scholarship granting organization.

Sec. 7. The department of state revenue shall prescribe a standardized form for scholarship granting organizations to report information required under this chapter.

Sec. 8. The department of state revenue may, in a proceeding under IC 4-21.5, suspend or terminate the certification of an

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1 organization as a scholarship granting organization if the
 2 department of state revenue establishes that the scholarship
 3 granting organization has intentionally and substantially failed to
 4 comply with the requirements of this article or an agreement
 5 entered into under this article.

6 Sec. 9. If the department of state revenue suspends or
 7 terminates the certification of an organization as a scholarship
 8 granting organization, the department of state revenue shall notify
 9 affected eligible students and their parents of the decision as
 10 quickly as possible. An eligible student affected by a suspension or
 11 termination of a scholarship granting organization's certification
 12 shall remain an eligible student under this article until the end of
 13 the school year after the school year in which the scholarship
 14 granting organization's certification is suspended or terminated,
 15 regardless of whether the scholarship student currently meets the
 16 definition of an eligible student.

17 Sec. 10. The department of state revenue may conduct either a
 18 financial review or an audit of a scholarship granting organization
 19 if the department of state revenue has evidence of fraud.

20 Sec. 11. The department of state revenue shall adopt rules under
 21 IC 4-22-2 to implement this article.

22 SECTION 3. [EFFECTIVE UPON PASSAGE] IC 6-3.1-30.5, as
 23 added by this act, applies to contributions made in taxable years
 24 beginning after December 31, 2008.

25 SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Education and Career Development, to which was referred Senate Bill No. 248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 14, after "2008," insert **"if there is a specific appropriation from the general assembly to implement the credit,"**.

Page 3, delete lines 13 through 15.

Page 3, line 16, delete "14." and insert **"13."**

Page 3, line 23, delete "15." and insert **"14."**

and when so amended that said bill do pass.

(Reference is to SB 248 as introduced.)

LUBBERS, Chairperson

Committee Vote: Yeas 6, Nays 4.

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